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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 193.

THOMAS T. STURGES AND SUSAN STURGES, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED FEBRUARY 20, 1883.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, in the second circuit, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said court, before you, between Thomas T. Sturges and Susan Sturges, plaintiffs in error, and The United States of America, defendant in error, a manifest error hath happened, to the great damage of the said Thomas T. Sturges and Susan Sturges, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you
2 send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court, this 31st day of August, one thousand eight hundred and seventy-eight.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States for the Southern District of New York.

3 The foregoing writ of error is allowed.
Aug. 31, 1878.

WM. G. CHOATE, *D. J.*

4 [Endorsed:] U. S. Supreme Court. Thomas T. Sturges and Susan Sturges, pl'ffs in error, *vs.* The United States of America, def't in error. Writ of error. U. S. circuit court. Filed Sep. 2, 1878. John I. Davenport, clerk. Service of the within writ of error is hereby admitted. N. Y., Sept. 2, '78. Stewart L. Woodford U. S. att'y. E. B. H.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

I, John I. Davenport, clerk of the circuit court of the United
5 States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from six to thirty-four, inclusive, contains a true and complete transcript of the record and proceedings had in said court in

the case of Thomas T. Sturges and Susan Sturges, plaintiffs in error against The United States of America, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this third day of October, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the said United States the one hundred and third.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN I. DAVENPORT, *Clerk.*

6 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judge of the district court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in said court before you, between The United States of America and Thomas T. Sturges and Susan Sturges, a manifest error hath happened, to the great damage of the said Thomas T. Sturges and Susan Sturges, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States for the southern district of
7 New York, in the second circuit, at the United States circuit court rooms in the city of New York, together with this writ, so that you may have the same at the said place on the first Monday of April next, in the said circuit court to be then and there held, that, the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court, this 27th day of January, one thousand eight hundred and seventy-six.

JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States for S. D. of New York.

I allow the within writ of error; and the said Thomas T.
8 Sturges and Susan Sturges, plaintiffs in error, having executed a bond, with sufficient surety, to the United States of America, defendants in error, as requested by law, and I having approved of such bond and security, I do order that the judgment in this action be stayed until final judgment shall be given upon this writ of error.

Jan. 27, 1876.

[Seal of Court.]

SAM'L BLATCHFORD.

The return to the within writ of error appears in the following papers and proceedings:

New York, Feb'y 18th, 1876.

GEO. F. BETTS,
Clerk of the District Court of the United States for the Southern District of New York.

(Endorsement on foregoing paper:) U. S. circuit court. 2,300. Thomas T. Sturges and Susan Sturges, pl'ffs in error, *vs.* The
9 United States of America, def'ts in error. Writ of error. Thomas Harland, att'y for pl'ffs in error. Rec'd Jan'y 27, 1876.

United States District Court for the Southern District of New York, in the Second Circuit.

Pleas before the judge of the district court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, at the term of January, 1876, to wit, of the 3rd day of January, in the year of our Lord one thousand eight hundred and seventy-six.

Witness the Honorable Samuel Blatchford, judge of the said court.

GEO. F. BETTS, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the 27th day
10 of October, 1875, in October term, 1875, before the judge of the district court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, came The United States of America, by George Bliss, Esq., their attorney, and brought into the said court, before the aforesaid judge thereof, then and there, their certain complaint against Thomas T. Sturges and Susan Sturges, being in custody, &c., of a plea of trespass on the case upon promises, which said complaint follows in these words:

That heretofore, to wit, on the 17th day of July, 1870, in the district aforesaid, Thomas T. Sturges died possessed of certain personal property of the value of one hundred thousand dollars, and then and there, by his last will and testament, appointed the defendants, respectively, his executor and executrix; that said will was then and there duly proved, and said defendants then and there received
11 and had in charge or trust in the fiduciary capacity aforesaid a certain legacy or interest arising from personal property, which then and there passed by the terms of said last will and testament, which were as follows:

"I give and bequeath to my son, George W. M. Sturges, the sum of one hundred thousand dollars, to his own use forever, to be paid to him within three months after he shall arrive at the age of twenty-

one years, and which legacy or interest then and there amounted to and was of the clear value of one hundred thousand dollars."

That said George W. M. Sturges was then and there the son of said Thomas T. Sturges.

That thereafter, to wit, on the twenty-first day of February, in the year one thousand eight hundred and seventy-two, said George W. M. Sturges arrived at the age of twenty-one years, and then and there became entitled to the possession and enjoyment of said legacy or interest, which was then and there of the value aforesaid, and to the beneficial interest in the profits accruing there-
12 from, and thereupon and by force of the statutes of the United States of America, in such case provided, there accrued and became due upon the 17th day of July, 1870, aforesaid, and payable on said 21st day of February, 1872, from the defendants to the plaintiffs, and the defendants became liable to pay then and there to the plaintiffs a duty or tax upon said clear value of said legacy or interest in the excess of the sum of one thousand dollars, at the rate of one dollar for each and every hundred dollars of excess of said value, to wit, the sum of nine hundred and ninety dollars, with interest thereon from the day last aforesaid, which, although then and there demanded, remains due and unpaid.

Wherefore the plaintiffs demand judgment for nine hundred and ninety dollars, with interest thereon from the 21st day of February, 1872, and for the costs of this action.

The defendants herein demur to the amended complaint of the plaintiffs on the ground that the said complaint does not state
13 facts sufficient to constitute a cause of action.

Dated New York, October 27, 1875.

At a stated term of the district court of the United States for the southern district of New York, held in the court-room of said court, on the 3rd day of January, 1876.

Present: The honorable Samuel Blatchford, district judge.

THE UNITED STATES *vs.* THOMAS T. STURGES and SUSAN STURGES.

Upon the demurrer to the declaration of the plaintiff in the above-entitled action coming on to be heard, after hearing Thomas Harland, Esquire, of counsel for defendants, and Roger M. Sherman, assistant U. S. attorney, for the plaintiffs, it is considered by the court and accordingly hereby ordered—

14 That said demurrer be overruled, and that the plaintiffs take judgment thereon with costs.

SAMUEL BLATCHFORD.

And because the said court, before the aforesaid judge thereof, now here, is not yet advised what judgment to give of and upon the premises, therefore the process thereof is continued between the parties aforesaid of the plea aforesaid, in this same court, before the judge thereof, until the 3rd day of January, 1876, at the United States court buildings, in the city of New York; at which day, before the judge aforesaid, at the said court buildings, came as well

the said plaintiffs, by their attorney aforesaid, as the said defendants. Wherefore, upon all and singular, the premises aforesaid being seen, and by the said court here fully understood, and mature deliberation being thereupon had, it appears to the said court here
that the complaint aforesaid and the matters therein con-
15 tained are sufficient in law for the plaintiffs to have and
maintain their aforesaid action thereof against the said defendants.

Therefore it is considered that the said plaintiffs do recover against the said defendants their said debt, and also fifty-four and $\frac{96}{100}$ dollars for their damages, which they have sustained as well on occasion of the detaining of the said debt as for their costs and charges by them about their suit in this behalf, expended by the said court, now here adjudged to the said plaintiffs, and with their assent, which said debt, damages, costs, and charges, in the whole amount to twelve hundred and eighty-one $\frac{41}{100}$ dollars.

And the said defendants in mercy, &c.

Judgment signed this 14th day of February, 1876.

GEO. F. BETTS, *Clerk.*

(Endorsed:) Judgment record.

16 Judgment record:

Debt	1,226 45
Costs	54 96
	$1,281 41

Filed Feb'y 15, 1876.

UNITED STATES OF AMERICA, *ss:*

United States Circuit Court, Southern District of New York.

THOMAS T. STURGES & SUSAN STURGES, Pl'ffs in Error,

vs.

THE UNITED STATES OF AMERICA, Def'ts in Error.

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States for the southern district of New
York, in the second circuit, to be holden at the United States
17 circuit court rooms in the city of New York, in the said
southern district of New York, on the first Monday of April next, pursuant to a writ of error filed in the clerk's office of the district court for the southern district of New York, wherein Thomas T. Sturges and Susan Sturges are plaintiffs in error and The United States of America is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand at the city of New York, in the southern

district of New York, the 27th day of January, one thousand eight hundred and seventy-six.

SAM'L BLATCHFORD, *D. J.*

Service of a copy of the above citation is hereby admitted. March 16, 1876.

GEORGE BLISS,
U. S. Attorney, R. M. S.

18 (Endorsement on citation :) U. S. circuit court, south. dist. N. Y. 2300. Thomas T. Sturges & Susan Sturges, pl'ff's in error, *vs.* The United States of America, def'ts in error. Citation. Thomas Harland, att'y for pl'ffs in error. Rec'd Jan'y 27, 1876.

Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

THOMAS T. STURGES & SUSAN STURGES, Pl'ffs in Error,
vs.
THE UNITED STATES OF AMERICA, Def'ts in Error.

Know all men by these presents that we, Thomas T. Sturges, Susan Sturges, George W. M. Sturges, and Joseph Bell, are held and firmly bound unto The United States of America in the sum of one thousand five hundred dollars, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the twenty-sixth day of January, in the year of our Lord one thousand eight hundred and seventy-six.

19 Whereas the above-named Thomas T. Sturges and Susan Sturges, as plaintiffs in error, have prosecuted a writ of error issuing out of the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the judgment rendered in the above-entitled suit by the judge of the district court of the United States for the said southern district:

Now, therefore, the condition of this obligation is such that if the above-named plaintiffs in error, Thomas T. Sturges and Susan Sturges, shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make their writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

THOMAS T. STURGES. [L. S.]
SUSAN STURGES. [L. S.]
JOSEPH BELL. [L. S.]
GEORGE W. M. STURGES. [L. S.]

Sealed and delivered and taken and acknowledged this 26th day of January, before me.

JOHN I. DAVENPORT,
U. S. Com'r.

UNITED STATES OF AMERICA, *ss:*

20 SOUTHERN DISTRICT OF NEW YORK, *ss:*

George W. M. Sturges and Joseph Bell, being duly sworn, do depose and say, and each for himself saith, that he is worth the sum of three thosand dollars over and above all his just debts and liabilities.

JOSEPH BELL.
GEORGE W. M. STURGES.

Sworn to this 26th day of January, A. D. 1876, before me.
JOHN I. DAVENPORT,
U. S. Com'r.

I approved of the sufficiency of the sureties to the within bond. Dated New York, Jan'y 27, 1876.

SAM'L BLATCHFORD.

(Endorsement on bond:) 2300. United States circuit court for the southern district of New York, in the second circuit. Thomas T. Sturges and Susan Sturges, pl'ffs in error, *vs.* The United States of America, def'ts in error. Bond for damages and costs on writ
21 of error. Thomas Harland, attorneys for pl'ffs in error. Filed this 27th day of January, 1876.

22 [Endorsed:] U. S. circuit court for the southern district of New York, 2nd circuit. Thomas T. Sturges and Susan Sturges, pl'ffs in error, *vs.* The United States of America, def'ts in error. Copy. Writ of error and return. Thomas Harland, att'y for pl'ffs in error. Filed M'ch 16, 1876.

23 Circuit Court of the United States for the Southern District of New York. In Error. Of April Term, A. D. 1876.

THOMAS T. STURGES, SUSAN STURGES
vs.
THE UNITED STATES OF AMERICA, Def't.

Afterwards, to wit, on the first Monday of April, in the same term, before the justices of said circuit court, at the United States court-house, in the city of New York, come the said Thomas T. Sturges and Susan Sturges, by Thomas Harland, their attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit: That the declaration aforesaid and the matters therein contained are not sufficient in law for the said United States of America to have or maintain its aforesaid action thereof against the said Thomas T. Sturges and Susan Sturges. There is also
24 error in this, to wit: That by the record aforesaid it appears that the judgment aforesaid given was given for the said United States of America against the said Thomas T. Sturges and Susan Sturges.

Whereas by the law of the land the said judgment ought to have been given for the said Thomas T. Sturges and Susan Sturges against

the said United States of America, and the said Thomas T. Sturges and Susan Sturges pray that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment.

THOMAS HARLAND,
Attorney for Plaintiffs in Error.

Endorsed: U. S. circuit court, south dist. N. Y. Thomas T. Sturges & Susan Sturges *vs.* The United States of America, def'ts in error. Assignment of errors. Thomas Harland, att'y for pl'ff in error. Filed Nov. 2, 1876.

25 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tuesday, the 18th day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

Present: The Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States.

THOMAS T. STURGIS *et al.*, Plaintiffs in Error,
vs.
THE UNITED STATES, Def'ts in Error.

Argument of the above-entitled cause upon writ of error to the district court of the United States for the southern district of New York, coming on to be heard.

Thomas Harland, of counsel for said plaintiffs in error, is heard on behalf of the same.

Stewart L. Woodford, U. S. attorney, counsel for said defendants in error, is heard on behalf of the same.

Mr. Harland is heard in reply.

Curia advisari vult.

26 Circuit Court of the United States, Southern District of New York.

THOMAS T. STURGES *et al.*, Pl'ff- in Error, *vs.* THE UNITED STATES.

ANGELO HELLMAN *vs.* THE UNITED STATES.

WAITE, C. L., J.:

The judgment in each of these cases is affirmed. The distinction between taxes on legacies and taxes on successions is so clearly stated by Judge Shipley, of the first circuit, in Mason *vs.* Sargent, 14 Int. Rev. Rec., 155, that it is only necessary to refer to that case as authority for this decision. In cases of succession the right to the tax does not accrue until the successor becomes entitled to the possession or enjoyment of the estate to which he succeeds, but in cases of pecuniary legacies it accrues upon the death of the testator, though not payable until the legatee becomes entitled to the benefit
27 of his legacy. Clapp *vs.* Mason, 94 U. S., 589, was a case of tax upon a succession.

Endorsed: Thos. T. Sturges *vs.* The United States. Angelo Hellman *vs.* The United States. Opening. U. S. circuit court. Filed July 1st, 1878. John I. Davenport, clerk.

28 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday, the fifth day of July, in the year of our Lord one thousand eight hundred and seventy-eight.

Present: The Honorable Morrison R. Waite, circuit judge, Chief Justice of the Supreme Court of the U. S.

THOMAS T. STURGES *et al.*, Plaintiffs in Error,
ag'st
THE UNITED STATES OF AMERICA, Defendant in Error.

This case coming on to be heard on the writ of error and record herein, and after hearing the counsel for the respective parties, and due deliberation being had in the premises, it is ordered, adjudged, and decreed that the judgment of the district court be, and the same hereby, is in all things confirmed, with costs.

M. R. WAITE,
Chief Justice U. S.

Endorsed: U. S. circuit court, south. dist. N. Y. Thomas T. Sturges, plaintiff in error, ag'st U. S. of America, def't in error. Order affirming judg't dist. c't herein. Stewart L. Woodford, U. S. att'y, U. S. circuit court. Filed July 5, 1878. John I. Davenport, clerk.

29 United States Supreme Court. In Error.

THOLAS T. STURGES and SUSAN STURGES, Plaintiffs in Error,
ag'st
THE UNITED STATES OF AMERICA, Defendant in Error.

Afterwards, to wit, on the second Monday of October, A. D. 1878, before the justices of said Supreme Court, comes the said Thomas T. Sturges and Susan Sturges, by Thomas Harland, their attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that the declaration aforesaid and the matters therein contained are not sufficient in law for the said United States to have or maintain its aforesaid action against the said Thomas T. Sturges and Susan Sturges. There is also error in this, to wit: First, that by the record aforesaid it appears that the judgment aforesaid given was given for the said United States against the said Thomas T. Sturges and Susan Sturges, whereas by the law of the land the said judgment ought to have been given for the said Thomas T. Sturges and Susan Sturges against the said United States,

30 and, second, that by the record aforesaid it appears that judgment was given for the United States for interest from the twenty-first day of February, A. D. 1872, whereas by the law of the land the said judgment ought to have been given only for interest from the tenth day of February, A. D. 1875.

And the said Thomas T. Sturges and Susan Sturges pray that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment.

(S'd) THOMAS HARLAND,
Attorney for Plaintiffs in Error.

Endorsed: U. S. Supreme Court. Thomas T. Sturges & Susan Sturges, pl't'ffs in error, ag'st The United States of America, def't in error. Assignment of errors. Thomas Harland, att'y for pl't'ffs in error. 262 B'way, N. Y. city. U. S. circuit court. Filed Oct. 3, 1878. John I. Davenport, clerk.

31 Supreme Court of the United States.

THOMAS T. STURGES & SUSAN STURGES, Plaintiffs in Error,
v.
THE UNITED STATES OF AMERICA, Defendant in Error.

Know all men by these presents that we, Thomas T. Sturges, Susan Sturges, George W. M. Sturges, & George A. Rowe, are held and firmly bound unto the above-named United States of America in the sum of five hundred dollars, to be paid to the said United States, for the payment of which, well and truly to be made, we bind ourselves and each of us, and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 29th day of August, one thousand eight hundred and seventy-eight.

Whereas the above-named Thomas T. Sturges and Susan
32 Sturges, has prosecuted their writ of error to the Supreme Court of the United States to reverse the judgment rendred in the above-entitled suit by the judges of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Thomas T. Sturges and Susan Sturges shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make their writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

THOMAS T. STURGES. [L. S.]
SUSAN STURGES. [L. S.]
GEORGE W. M. STURGES. [L. S.]
GEORGE A. ROWE. [L. S.]

Signed and acknowledged this 29th day of Aug., 1878.

H. J. MORRIS,
Notary Public, Kings Co. Cert. Filed.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

George W. M. Sturges and George A. Rowe, being duly
33 sworn, depose and say, and each for himself saith: That he

is worth the sum of one thousand dollars over and above all his just debts and liabilities.

GEORGE W. M. STURGES.
GEORGE. A. ROWE.

Sworn to this 29 day of August, 1878, before me.

H. J. MORRIS,
Notary Public, Kings Co. Cert. Filed.

I approve of the sufficiency of the sureties to the within bond. Aug. 31, 1878.

W. G. CHOATE.

Endorsed: U. S. Supreme Court. Thomas T. Sturges & Susan Sturges, pl'ffs in error, *v.* The United States of America, def't in error. Bond on writ of error. U. S. circuit court. Filed Sept. 2, 1878. John I. Davenport, clerk.

34 UNITED STATES OF AMERICA, *ss:*

United States Supreme Court.

THOMAS T. STURGES and SUSAN STURGES, Plaintiffs in Error,
vs.
THE UNITED STATES OF AMELICA, Defendant in Error.

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden in the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Thomas T. Sturges and Susan Sturges are plaintiffs in error, and the United States of America is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice be done to the parties
35 in that behalf.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 31st day of August, one thousand eight hundred and seventy-eight.

WM. G. CHOATE, *D. J.*

36 [Endorsed:] U. S. Supreme Court. Thomas T. Sturges and Susan Sturges, pl't'ffs in error, *vs.* The United States of America, def't in error. Citation. Service of the within citation is hereby admitted. N. Y., Sept. 2, '78. Stewart L. Woodford, U. S. att'y. E. B. H. U. S. circuit court. Filed Sep. 2, 1878. John I. Davenport, clerk.

Endorsed on cover: S. New York. C. C. U. S. No. 193. Thomas T. Sturges and Susan Sturges, plaintiffs in error, *vs.* The United States. Filed 20th February, 1883.

117-363

MAR 22 1886

Supreme Court of the United States

THOMAS T. STURGES AND SUSAN STURGES

vs.

THE UNITED STATES.

} IN ERROR.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT.

The plaintiffs in error are executors of Thomas T. Sturges, who died on the 17th day of July, 1870, leaving a will by the terms of which the sum of one hundred thousand dollars was given to George W. M. Sturges, a son of the testator, "to be paid to him within three months after he shall arrive at the age of twenty-one years."

The said George W. M. Sturges arrived at the age of twenty-one years on the twenty-first day of February, 1872.

Said legacy was of the clear value of one hundred thousand dollars.

No tax was paid to the United States on account of said legacy, and on the tenth day of February, 1875, this suit was commenced in the District Court to recover an amount alleged to be due.

In the District Court, judgment was entered for $1,000, together with interest from the twenty-first day of February, 1872, which judgment was affirmed in the Circuit Court.

At the time of the death of Thomas T. Sturges, the act of June 30, 1864, sections 124 and 125, (13 Stat. at Large, 285 and 286), as amended by the act of July 13, 1866, section 9, (14 Stat. at Large, 140), was in force. The taxes imposed by these sections upon legacies were by the act of July 14, 1870, section 3, (16 Stat. at Large, 256), repealed from and after October 1, 1870.

The repealing act contained a proviso (16 Stat., 261, § 17), continuing in force all acts and parts of acts relating to taxes therein repealed, for levying and collecting all taxes properly assessed, or liable to be assessed or accruing under the provisions of former acts, and contained no other saving clause.

Under the acts in force at the death of the testator, no tax was payable upon the legacy in question, until the legatee should become entitled in possession, to wit, until some time subsequent to the 21st day of February, 1872. The repealing act took effect October 1, 1870.

I.

The only taxes saved from the repeal are those which had *accrued* prior to the repeal, and no right *accrued* until the tax could be demanded, that is, until it was made payable.

Clapp *v.* Mason, 94 U. S., 589.
Mason *v.* Sargeant, 104 U. S., 689.

In the present case the tax was not payable, under the terms of the repealed statute, until February 21, 1872, and the same had not accrued at the time of the repeal.

All which is respectfully submitted.

THOMAS HARLAND,
Of Counsel.

Office Supreme Court U. S.
FILED.
MAR 22 1886
JAMES H. McKENNEY.
CLERK.

117-363

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

THOMAS T. STURGES AND SUSAN STURGES, plaintiffs in error,
vs.
THE UNITED STATES.
} No. 193.

BRIEF FOR THE UNITED STATES.

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STATEMENT OF THE CASE.

This suit was brought on the 27th day of October, 1875, in the district court of the United States for the southern district of New York, for the purpose of recovering a certain tax or duty upon a pecuniary legacy. The defendants demurred to the complaint of the plaintiffs, on the ground that the said complaint does not state facts sufficient to constitute a cause of action. The complaint will be found in the record, pp. 3 and 4.

On the 3d day of January, 1876, the district judge overruled the demurrer and gave judgment for the plaintiff. From that judgment a writ of error was sued out, and on the 18th day of June, 1878, the circuit court for the southern district of New York affirmed the judgment of

the district court. The opinion of the chief justice will be found in the record at page 8. From the said judgment of the circuit court this writ of error has been taken.

ARGUMENT.

Section 124 of the act of June 30, 1864, provides that—

> Any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property aforesaid shall exceed the sum of $1,000 in actual value, passing, after the passage of this act, from any person possessed of such property, either by will or the intestate laws of any State or Territory, or any personal property or interest therein transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to any person or persons, or any body or bodies politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax to be paid to the United States.

The one hundred and twenty-fifth section of the same act as amended by section 9 of the act of July 13, 1866 (14 Stat. L., 140), provides:

> That the tax or duty aforesaid shall be due and payable whenever the party interested in such legacy or distributive share of property or interest aforesaid shall become entitled to the possession or enjoyment thereof, or to the beneficial interest in the profits accruing therefrom, and the same shall be a lien and charge upon the property of every person who may die as aforesaid for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States.

The act of July 14, 1870, repealed the taxes on legacies and successions. The repeal took effect on and after October 1, 1870; but section 17 of the repealing act saved "all taxes properly assessed or *accruing* under the provisions of former acts."

The question now arises whether, upon the facts as stated in the complaint, the tax for the recovery of which this suit was brought had "accrued" to the United States before the 1st of October, 1870. If it had thus "accrued" it is still collectible, notwithstanding the repealing act of July 14, 1870. The chief justice in delivering the opinion of the court below refers to the case of Mason *vs.* Sargent, 23d vol. of Int. Rev. Record, 155, as authority. In that case Judge Shepley held that—

> The tax upon a pecuniary legacy under the provisions of the statutes must be taken to have accrued immediately upon the death of the testator, though not due and payable until the party interested in the legacy becomes entitled to the possession or enjoyment thereof, or the beneficial interest in the profits accruing therefrom.

In May *et al. vs.* Slack, 16 Int. Rev. Rec., it was decided by Judges Clifford and Lowell that the tax is to be taken to accrue upon a pecuniary legacy immediately upon the death of the testator, though not payable until the legacy is payable. It is proper to observe, however, that the decision of Judge Shepley, in Mason *vs.* Sargent, relied upon as authority by the circuit court, has been reversed by this court. (See Mason *vs.* Sargent, 104 U. S., 689.) The decision of this court in that case is placed upon the ground that no right to the payment of the tax